

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

:: O R D E R ::

Shiv Lal Avasthi Vs. Union of India & Ors.

D.B. CIVIL WRIT PETITION No.3011/1999
UNDER ARTICLE 226 AND 227 OF THE
CONSTITUTION OF INDIA.

Date of Order :: 07-04-2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE JUSTICE SHRI GOPAL KRISHAN VYAS

Mr. M.K. Trivedi, for the petitioner.
Mr. Jagdish Vyas, for the respondents.

PER HON'BLE THE CHIEF JUSTICE (ORAL) -

This writ petition is directed against the order of Central Administrative Tribunal dated 17.2.1999 dismissing the Original Application of the petitioner. The petitioner had filed the application for quashing the charge memo dated 9.8.1988 and the order dated 19.1.1994. He also prayed for quashing the order of suspension dated 12.7.1988 with a declaration that he be treated as on duty with full pay for the period from 12.7.1988 to 28.8.1989. Facts of the case briefly are as follows.

During the tenure of the petitioner as Chief Ticket Inspector in the Northern Railway at Jodhpur, he applied for allotment of quarter No.T-64A on 20.6.1986. According to him, he required the

quarter for treatment of his ailing wife. Case of the petitioner is that on 1.7.1988, the Divisional Commercial Superintendent allotted him the said quarter with the approval of the Divisional Railway Manager. On 12.7.1988, however all on a sudden he was placed under suspension in contemplation of a departmental proceeding and on 9.8.1988 a charge memo was issued to him. The petitioner filed O.A. No.17/89 before the Central Administrative Tribunal, Jodhpur Bench for quashing the departmental proceeding. In the meantime, on 21.8.1989 the order of suspension was revoked but without prejudice to the ongoing enquiry. On 24.8.1993, the O.A. was disposed of with a direction to the respondents that in case the petitioner makes representation for regularisation of the period from 12.7.1988 to 21.8.1989, the same may be disposed of on merit by a speaking order. It is important to mention here that during pendency of the said application in the Tribunal, the petitioner retired from service on reaching the age of superannuation on 30.9.1992.

In the light of the said order of the Tribunal, on 6.9.1993 the petitioner filed representation. On 28.10.1993, copy of the inquiry report dated 19.12.1989 was sent to him by Divisional Railway Manager. As per the letter, copy of the report was not sent earlier as the matter was sub-judice in the Tribunal. It may be mentioned that

in the enquiry the Inquiry Officer had come to the conclusion that the charge levelled against the petitioner was substantiated. On receipt of the said letter dated 28.10.1993, the petitioner sent a reply on 5.11.1993 stating that he was not aware of the facts stated in the report, all that he could say was that he had been properly allotted the railway quarter and that the charge memo had been issued with mala fide intention. He also stated that the ex parte enquiry conducted by Shri B.P. Misra, the then A.C.S., Jodhpur was not in accordance with rules; the petitioner had never informed by the Inquiry Officer about the dates as the case was pending before the Tribunal. On 20.11.1993, the petitioner sent another letter challenging the jurisdiction of the Disciplinary Authority. On 19.1.1994, the impugned order was passed which may be quoted as under:

“1. The penal rent for the period the D/E Sh. Shiv Lal Avasthi, Retd. CTI(S), remained in quarter No.T-64A, unauthorisedly be recovered from him, as punishment.

2. The suspension period from 12.7.88 to 21.8.89 be treated as suspension and the D/E Sh. Shiv Lal Avasthi, should get only subsistence allowance only, as the charges have been proved for the un-authorised occupation of Rly. Quarter No.T-64A, for which he was suspended.”

The case of the respondents is that the so called allotment order in respect of quarter No.T-

64A was forged. The quarter which belonged to the operating pool was in occupation of Shri Bharat Singh, Guard-A earlier who vacated it on 29.6.1988. The quarter was thereafter allotted to one Shri Dev Dutt Sharma. However, when Shri Devdutt Sharma went to occupy the quarter on 2.7.1988 he found that the petitioner had already occupied the quarter by breaking its lock. The petitioner was thus in unauthorised occupation of the quarter belonging to the other pool. According to the respondents, by taking unauthorised occupation by breaking the lock the quarter which was never allotted to him, the petitioner had contravened rule 3(1)(i)(ii)(iii) of Railway Service Conduct Rules, 1968 and committed grave misconduct for which he was liable to disciplinary action.

In their reply to the Original Application of the petitioner, the respondents gave details of the enquiry and stated the circumstances in which enquiry was conducted ex parte because the petitioner did not co-operate with the Inquiry Officer. It was stated that the petitioner had been informed about each and every date. In the facts of the case and for reasons to be mentioned hereinafter, it is not necessary to mention those facts in this order.

Shri M.K. Trivedi, appearing for the petitioner tried to find lacunae in the conduct of enquiry. He submitted that the inquiry was conducted behind his back without informing him what is the date fixed for inquiry. Copy of the inquiry report was also not furnished to him in good time. In view of the admitted position that the petitioner retired from service on reaching the age of superannuation on 30.9.1992, bringing to an end the departmental proceeding and therefore, no penalty order could be passed against him, submissions made in this regard are totally misconceived and as such, we do not propose to deal with them.

Counsel for the respondents took a firm stand that the impugned order dated 19.1.1994 was not an order of penalty; by the order simply penal rent was sought to be recovered from the petitioner. We find substance in the stand of the counsel for the respondents. There cannot be any doubt that on superannuation of the employee, the employer-employee or the master-servant relationship comes to an end and he cannot be awarded any penalty. The departmental proceeding in the instant case must be deemed to have come to an end on 30.9.1992.

The only point for consideration is whether despite the proceeding coming to an end, the order dated 19.1.1994 could be passed against the

petitioner? The order, which has been quoted above, is in two parts. By the first part, the petitioner was held liable for penal rent for remaining in unauthorised occupation of quarter No.T-64A. By the second part of the order, the period of suspension from 12.7.1988 to 21.8.1989 was treated as suspension during which the petitioner was held entitled to only subsistence allowance. There cannot be two opinions that for occupation of a government quarter, the employee concerned is liable to pay rent under the rules unless by virtue of the terms of employment he is entitled to rent free accommodation. The petitioner was therefore certainly liable to pay rent even if it was a case of authorised occupation, that is to say, if the quarter in question had been allotted to him. The finding in this regard is to be contrary. Counsel for the petitioner tried to persuade us to take a view that the quarter had been duly allotted to the petitioner but having regard to the nature of the jurisdiction under Article 226 of the Constitution, it is not possible to take a different view. Indeed, if we may say so, in the facts and circumstances of the case, we are inclined to endorse the conclusion of the respondent authorities that the quarter had been allotted to said Devdutt Sharma and not to the petitioner, and he forcibly and unauthorisedly occupied the same. Once the conclusion is reached that the occupation was unauthorised, it would

follow as a consequence that he was liable to pay penal rent. Merely because rent payable in case of unauthorised occupation is described as penal rent it does not mean that the order directing the person to pay penal rent amounts to penalty. It is so described because of the rules. Where the rules provides for payment of penal rent in case of unauthorised occupation, the liability to pay such rent flows from the rules. May be, that the act of taking unauthorised occupation also constitutes misconduct for which he may be suitably punished in terms of service rules. In the instant case, as the petitioner retired from service, there was no question of any disciplinary action, but it does not mean that retirement from service absolved him of the liability to pay penal rent. The order was not passed as a measure of punishment. The relevant part of the order no doubt used the word 'punishment' but that in our opinion was a surplusage and in apparent ignorance of the legal position. Penalties or punishments are specified in the service rules. Charging 'penal' rent is not a penalty, it flows as a necessary consequence from the rules. And if the order has any 'penal' content, the petitioner has had sufficient opportunity of hearing and he therefore cannot challenge it on the ground of violation of rules of natural justice.

As regards second part of the impugned order, it may be recalled that by order of the

Tribunal dated 24.8.1993, the respondent authorities were directed to consider the representation of the petitioner in the matter of regularisation of the suspension period i.e., the period from 12.7.1988 to 21.8.1989. In terms of the service rules, it is obligatory for the competent authority to take a decision as to how the suspension period is to be treated – whether on duty or otherwise. The person may be treated to be on duty during suspension period for all purposes or for limited purpose, say, for the purpose of pension. In the instant case, the authorities took the view that the petitioner would not be treated as on duty and he would get only subsistence allowance which means that he was held not entitled to salary and other allowances. Such a view was taken in view of the finding that the allegation of unauthorised occupation of quarter No.T-64A had been proved. Where the competent authority takes the view that the allegation or the charge that led to suspension is proved, the employee cannot claim salary as a matter of right for the suspension period. He can be paid only subsistence allowance. This is all that was done by the second part of the order. We thus, find no error in the order directing that the petitioner would get only subsistence allowance for the suspension period.

In course of hearing, counsel for the petitioner made a grievance that while seeking to

recover the penal rent, the retiral dues of the petitioner have been withheld. According to the counsel, the petitioner has not been paid the Provident Fund and the Gratuity. It was submitted that the order does not specify the period for which the petitioner is liable to pay penal rent nor the rate(s) at which penal rent is chargeable has been disclosed. On behalf of the respondents, it was submitted that the necessary details have been disclosed in the reply.

After hearing counsel for the parties, we are of the view that it would be in the ends of justice to direct the respondents to calculate the amount allegedly due and recoverable from the petitioner as penal rent, preferably in his presence and in any case, after giving opportunity to him. As the petitioner retired more than a decade ago and his retiral dues have not been cleared, it would be only appropriate that exercise is completed within six weeks receipt of the copy of this order by the competent authority, said to be the Divisional Commercial Manager, Jodhpur. We direct accordingly.

Subject to the direction in foregoing paragraph, the writ petition is dismissed.

[GOPAL KRISHAN VYAS], J.

[S.N.JHA], CJ.

Praveen